IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Iwamura	)	Art Unit: 2419
Serial No.: 10/790,496	)	Examiner: Phunkulh
Filed: March 1, 2004	)	50T5713.02
For: **SYSTEM AND METHOD FOR MULTI-LINK COMMUNICATION IN HOME NETWORK**	)	May 20, 2009 750 B STREET, Suite 3120 San Diego, CA 92101

APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This brief is submitted under 35 U.S.C. §134 and is in accordance with 37 C.F.R. Parts 1, 5, 10, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

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(1) **Real Party in Interest**

The real parties in interest are Sony Corp. and Sony Electronics, Inc.

(2) **Related Appeals/Interferences**

No other appeals or interferences exist which relate to the present application or appeal.

(3) **Status of Claims**

Claims 1-25 are pending and twice rejected, which claims and rejections are hereby appealed.

(4) **Status of Amendments**

No amendments are outstanding.

(5) **Summary of Claimed Subject Matter**

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

Claim 1 sets forth a home entertainment system that includes a server (reference numeral 201, figures 1 and 3; page 4, last paragraph) configured for both wired and wireless communication and a component (202, figures 2 and 3; page 6, last paragraph) configured for communicating with the server along a wired path and also being configured for communicating with the server along a wireless path. The server and/or the

component determines which path to use for communication based on component preference (304, figure 6; page 11, first full paragraph) and/or bandwidth capability (305, figure 6; page 11, first full paragraph) and/or occupancy ratio (401, figure 7; page 12, last paragraph).

Claim 9 recites a method for communicating a home network that includes determining (301, 302, figure 6; page 11, last paragraph to top of page 12) that both a wired and a wireless path exist between two components and then determining (304, figure 6; page 11, first full paragraph) whether at least one of the components prefers a particular path and if so, communicating data over that path. Otherwise Claim 9 recites that data is communicated over at least one of the paths based on a bandwidth capability (305, figure 6; page 11, first full paragraph) and/or occupancy ratio (401, figure 7; page 12, last paragraph).

Claim 18 recites a system for communicating between first and second components (201, 202, figure 3; page 4, last paragraph) in a home network. The system of Claim 18 includes means (e.g., the PLC interfaces 9 and 112, figures 1 and 2; top of page 5 and top of page 6) for establishing a wired communication path between the components and means (e.g., the wireless interfaces 21 and 125, figures 1 and 2, top of page 5 and top of page 6) for establishing a wireless communication path between the components. Also, the system has means (e.g., the server processor 4, figure 1; page 5, line 6 executing step 304, figure 6; page 11, first full paragraph) for communicating data over a component-preferred path when a component-preferred path is indicated, with the component-preferred path being selected from the wired and wireless communication paths. Means (e.g., the server processor 4, figure 1; page 5, line 6 executing step 305, figure 6; page 11, first full paragraph and/or step 401, figure 7; page 12, last paragraph) are provided for, when no component-preferred path is indicated, communicating data over at least one of the paths based on a bandwidth capability and/or an occupancy ratio.

(6) **Ground of Rejection to be Reviewed on Appeal**

Claims 1-25, of which Claims 1, 9, and 18 are independent, have been rejected under 35 U.S.C. §103 as being unpatentable over Falvo, USPP 2003/0140343.

(7) **Argument Heading For the Single Ground of Rejection**

As an initial matter, given that Appellant has requested a pre-appeal request for review of anticipation rejections based on Falvo and that prosecution has been reopened in which the anticipation rejections have been converted to obviousness rejections based on Falvo, no further reopenings of prosecution are expected, since the examining corps could have but deliberately chose not to apply different references and instead persisted in using Falvo.

Claim 1 Sub-heading

The Office Action correctly alleges that in Falvo, "the display devices are connectable to WLAN bridge 330 via ***either*** twisted pair ***or*** via RF link, see figure 5 (sic, figure 3)" (emphasis mine). Claim 1, however, requires that a component be configured for communicating with the server along a wired path ***and also*** along a wireless path, and that the server and/or component determines which path to use for communication based on at least one of: a component preference, a bandwidth capability, an occupancy ratio. Thus, since no one display component in Falvo appears to communicate over both a wired and a wireless link as required by Claim 1, there is no reason to undertake the determination in Claim 1 of selecting which path to use, much less to undertake the determination using the specific parameters claimed, and not surprisingly Falvo does not teach anything of the sort.

Indeed, Falvo's description of the relied-upon components in figure 3 bears this out:

> "[0048] FIG. 3 shows a digital cable TV system 300 including an in-home network including wireless display (remote wireless) devices 310, 315 and wired display devices 320, 325 used to create reminder and intercom messages using a wireless local area network (WLAN) 330 that is bridged either to a cable modem within an STB 335 or a stand-alone cable modem (not shown) to allow access to the Internet 340. Data received from the Internet 340 is primarily routed from the cable modem in STB 335 to the display devices 310, 315, 320, 325 through the WLAN Bridge 330. The display devices 310, 315, 320, 325 support both HomeRF and 802.11b wireless protocols."

Thus, as unambiguously taught by the reference, each of the relied-upon components communicates with the WLAN bridge 330 through a wired link, ***or*** a wired link, but not both, since apparently no component is configured for multi-link communication. Thus, there is no possible reason to modify Falvo to make a choice between two links, much less in the ways variously recited in the claims. The error in the rejections could not be clearer.

A second and perhaps more glaringly clear error militating toward reversal is that even if the Board finds that a component in Falvo can communicate over both a wired link and a wireless link, the Office Action, page 3, first full paragraph readily admits that Falvo fails to teach determining which one to use based on preference or bandwidth capability or occupancy ratio. In other words, the examiner has placed a finding of fact on the written record that the selection algorithm of Claim 1 is absent from Falvo. Nonetheless, the rejection declares, without evidentiary support, that this admittedly untaught algorithm would have been obvious "to communicate data immediately and effectively".

Well, yes, it is nice "to communicate data immediately and effectively". But this banal observation cannot seriously be taken as a legally acceptable reason to dismiss a specifically claimed link selection

protocol, any more than an inchoate desire to fly can be seriously regarded as a prior art suggestion that would render the Wright brother's flying machine unpatentable. The claims are patentable over Falvo.

Claim 9 Sub-heading

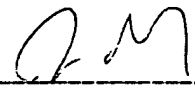
In addition to the above reasons for patentability, Claim 9 explicitly requires determining that both a wired and a wireless path exist between the components. This apparently is never done in Falvo. Simply because two components may be connected over both of two paths (and as mentioned above this is at best unclear in Falvo) does not mean that any determination of such is explicitly made as claimed. Moreover, as signaled by the term "otherwise", the protocol in Claim 9 differs slightly from Claim 1 in that a preferential path determination is first made and only then is a bandwidth/occupancy ratio determination made. Since Falvo admittedly teaches no protocol at all for link selection it most certainly cannot suggest the particular order of link selection tests required by Claim 9.

Claim 18 Sub-heading

The comments above apply *mutatis mutandis* for Claim 18. Additionally, Claim 18 must be construed under 35 U.S.C. § 112, sixth paragraph to cover only structure shown in the present specification for performing the recited function and structural equivalents thereto, Valmont Indus. Inc. v. Reinke Mfg. Co., 983 F.2d 1039 (Fed. Cir. 1993). However, no separate claim construction has been advanced by the examiner or any explanation as to why Claim 18 is (or is not) as broad as Claims 1 and 9. The record is silent as to what structures the PTO thinks establish the variously recited "means" and what the PTO believes are

structural equivalents thereto. For this clear error in failing to develop the record as to how Claim 18 is being construed, the rejection of Claim 18 merits reversal.

Respectfully submitted,



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APPENDIX A - APPEALED CLAIMS

1. A home entertainment system, comprising:

at least one server configured for both wired and wireless communication; and

at least one component configured for communicating with the server along a wired path and also being configured for communicating with the server along a wireless path, the server and/or the component determining which path to use for communication based on at least one of: a component preference, a bandwidth capability, an occupancy ratio.

2. The system of Claim 1, wherein a respective address is associated with each path over which the component communicates.

3. The system of Claim 2, wherein the addresses are IP addresses.

4. The system of Claim 1, wherein the component is selected from the group of components consisting of: televisions, and portable computers.

5. The system of Claim 4, wherein the component is a TV.

6. The system of Claim 1, wherein at least one of: the server, and component, determines which path to use for communication based at least in part on a component preference.

7. The system of Claim 1, wherein at least one of: the server, and component, determines which path to use for communication based at least in part on a bandwidth capability.

8. The system of Claim 1, wherein at least one of: the server, and component, determines which path to use for communication based at least in part on an occupancy ratio.

9. A method for communicating a home network, comprising:

determining that both a wired and a wireless path exist between the components;

determining whether at least one of the components prefers a particular path and if so, communicating data over that path; otherwise

communicating data over at least one of the paths based on at least one of: a bandwidth capability, an occupancy ratio.

10. The method of Claim 9, comprising communicating simultaneously between the components using both paths.

11. The method of Claim 9, wherein a respective address is associated with each path over which the component communicates.

12. The method of Claim 11, wherein the addresses are IP addresses.

13. The method of Claim 9, wherein at least one component is selected from the group of components consisting of: televisions, and portable computers.

14. The method of Claim 13, wherein the component is a TV.

15. The method of Claim 9, wherein at least one of: a server, and a component, determines which path to use for communication based at least in part on a component preference.

16. The method of Claim 9, wherein at least one of: a server, and a component, determines which path to use for communication based at least in part on a bandwidth capability.

17. The method of Claim 9, wherein at least one of: a server, and a component, determines which path to use for communication based at least in part on an occupancy ratio.

18. A system for communicating between at least first and second components in a home network, comprising:

means for establishing a wired communication path between the components;

means for establishing a wireless communication path between the components;

means for communicating data over a component-preferred path when a component-preferred path is indicated, the component-preferred path being selected from the wired and wireless communication paths;

means for, when no component-preferred path is indicated, communicating data over at least one of the paths based on at least one of: a bandwidth capability, an occupancy ratio.

19. The system of Claim 18, wherein a respective address is associated with each path.

20. The system of Claim 19, wherein the addresses are IP addresses.

21. The system of Claim 18, wherein at least one component is selected from the group of components consisting of: televisions, and portable computers.

22. The system of Claim 21, wherein the component is a TV.

23. The system of Claim 18, wherein at least one of: a server, a component, determines which path to use for communication based at least in part on a component preference.

24. The system of Claim 18, wherein at least one of: a server, a component, determines which path to use for communication based at least in part on a bandwidth capability.

25. The system of Claim 18, wherein at least one of: a server, a component, determines which path to use for communication based at least in part on an occupancy ratio.

APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)